

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

JUL 11 2017

JULIA C. DUDLEY, CLERK
BY: 
DEPUTY CLERK

GREGORY D. GRAVES,
Petitioner,

Civil Action No. 7:17 -cv-00263

v.

MEMORANDUM OPINION

JEFFREY B. KISER,
Respondent.

By: Hon. Jackson L. Kiser
Senior United States District Judge

Gregory D. Graves, a Virginia inmate proceeding pro se, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his May 4, 2000, judgments entered by the Circuit Court of the City of Danville for statutory burglary, attempted rape, and attempted sodomy. Petitioner's two claims relate to deficiencies apparent before the state criminal judgment was entered. Cf. United States v. Hairston, 754 F.3d 258, 262 (4th Cir. 2010).

Court records indicate that petitioner previously filed a § 2254 petition about the same convictions in Civil Action No. 7:03-cv-00255. Thus, petitioner's current petition is a subsequent one, falling under the prohibition in 28 U.S.C. § 2244(b) against a second or successive petition. See, e.g., Graves v. Commonwealth, No. 7:13cv486, slip op. at 1 (W.D. Va. Jan. 2, 2014) (dismissing § 2254 petition without prejudice as successive), appeal dismissed, No. 14-6071 (4th Cir. Apr. 22, 2014). Pursuant to § 2244(b), a federal district court may consider a second or successive § 2254 petition only upon specific certification from a United States Court of Appeals. Because petitioner has not submitted any evidence that he has obtained that certification, I dismiss the petition without prejudice as successive. Based upon the finding that the petitioner has not made the requisite substantial showing of a denial of a constitutional right as required by 28 U.S.C. § 2253(c) and Slack v. McDaniel, 529 U.S. 473, 484 (2000), a certificate of appealability is denied.

ENTER: This 11th day of July, 2017.


Senior United States District Judge